

**Waterfront Advisory Committee
Minutes for the Meeting of
July 21, 2016**

Present: Charlie Kane, Chairman
Bob Anderson
Bruce Kauderer
Stuart Greenbaum

Also present: Daniel O'Connor, Village Engineer

Absent: Brian Pugh

1. Call to Order

Chairman Kane called the meeting to order at 4:00 p.m.

2. REFERRALS

- a) *Referral from Water Control Commission to review application from NYSDEC for Regulated Activities in Wetlands and Watercourses for the herbicide control of invasive plant Hydrilla in the Croton River -- consistency review.*

Chairman Kane stated that the purpose of this referral to the WAC from the WCC is to look at the consistency of the hydrilla treatment plan with the LWRP, and to consider long term or adverse impacts on living things and that nothing gets into the wellfield.

The committee discussed at length where the aquifer is located in relation to the herbicide treatment injection site, and the concerns of toxicity of the proposed herbicide. The concerns raised during the meeting are incorporated in the following policy review.

In a review of the CAF, the following necessary corrections should be made::

- *Page 1, B.1.c) "Permit, approval, license, certification," the WAC questioned whether a Federal permit might be required*
- *Page 1, B. 2. Should read "Fireman's Island" NOT "Deer Island"*
- *Page 1, 3. Should read "Fireman's Island" NOT "Deer Island"*
- *Page 2, 9. a) "Hudson River and Croton River" should be listed*
- *Page 2, 11. The answer should be YES, not NO*
- *Page 3, (2), a) The answer to "Will the proposed action have a significant effect upon commercial or recreational use of fish and wildlife resources", the answer should not be NO, but instead should be a question mark since an answer is unknown*
- *Page 3, (2), g) The answer to "Will the proposed action have a significant effect upon surface or groundwater quality?" the answer should not be NO, but instead should be a question mark since an answer is unknown*

- *Page 3, (3), k) The answer to “Will the proposed action involve or result in any of the following Diminished surface or groundwater quality?” the answer should not be NO, but instead should be a question mark since an answer is unknown.*
- *Page 4, (b) 1. The answer to “Will the project protect, maintain, and/or increase the level and types of public access to water-related recreation resources and facilities? Should be NO, not YES, because there will be a temporary 2-3 days when access to the river will be closed to the public.*
- *Page 4, 4. j. The answer to “Does the project involve transport, storage, treatment or disposal of solid waste or hazardous materials?” should be YES not NO because the herbicide will be transported by truck to the site and it is not known how the herbicide will be stored.*
- *Page 5, 4. l. The answer to “Does the project involve discharge of toxic hazardous substances or other pollutants into coastal waters? Should be YES not NO since the herbicide is toxic even though it will be diffused rapidly.*
- *In D. “Remarks or Additional Information”, In response to 1.a. The comment that the herbicide being used does not directly impact fish does not address the benthic community. The comment that the plants of concern are not submergent does not address the milfoil plant which is submergent.*

In a review of the EAF, Part I the following corrections should be made:

- *Page 1, Brief description of Proposed Action: Should read Fireman’s Island not Deer Island*
- *Page 2, B. b. The Water Control Commission (issues Wetland permit) should be added to the list of agencies and approval(s) required*
- *Page 2, B. h. The WAC questioned if this should be checked YES*
- *Page 2, C. C2.b. The Remediation Site #546031 should be identified by name*
- *Page 3, C.4.b. The police forces should read “Croton Police Department, Westchester County Police, and New York State Police” NOT Cortlandt Police Department or Westchester County Sheriffs’ Department*
- *Page 3, C.4.c. The fire protection and emergency medical services should be Croton on Hudson Fire Department and Croton EMS*
- *Page 4, D.2.b.(i): The text should be “from Black Rock Dam to Fireman’s Island” (NOT Deer Island)*
- *Page 8, D.2. (q) “Will the proposed action use pesticides during construction or operation”, the answer should be YES, not NO.*
- *Page 11, E.2. h. (iv) Why are three “Federal Waters” listed and do they need a permit?*
- *Page 12, E. 2.n. To the question: “Does the project site contain a designated significant natural community? The answer should be YES, not NO.*

In a review of the 44 policies of the LWRP, the following policies were identified as applicable and the proposed rezoning consistent:

POLICY 1: Restore, revitalize, and redevelop deteriorated and underutilized waterfront areas for commercial, industrial, cultural, recreational and other compatible uses.

This policy was identified as applicable since the treatment of the highly invasive aquatic plant Hydrilla is intended to revitalize the Croton River in which the invasive plant Hydrilla has spread throughout the Croton River. The invasive plant Hydrilla has been determined as posing a significant threat to the NYC water supply, high quality submerged aquatic vegetation beds, waterfowl and raptors, and to adjacent water bodies in NY and in neighboring states. The WAC members however questioned whether or not this policy is consistent with the LWRP since they do not believe that enough information about the effects of the herbicide has been provided. The committee acknowledged that Hydrilla is a significant threat to the Croton River.

POLICY 7: Significant coastal fish and wildlife habitats will be protected, preserved, and, where practical, restored so as to maintain their viability as habitats.

POLICY 7A: The quality of the Croton River and Bay significant fish and wildlife habitat and Haverstraw Bay significant fish and wildlife habitat shall be protected and improved for conservation, economic, aesthetic, recreational, and other public uses and values. Its resources shall be protected from the threat of pollution, misuse, and mismanagement.

Policy 7 and 7A were identified as applicable to the LWRP since the committee acknowledges the significant threat of the Hydrilla aquatic plant as it impacts the ecosystem and recreational uses of the river. However, the committee did not believe there was sufficient data about the following issues and questions related to these policies: 1) how would the benthic community and the underwater ecosystem this community supports survive, 2) how would the fish community survive if the benthic community for it was significantly impacted, 3) what the plan is to repopulate the benthic community if it were significantly impacted 4) whether NYS would be responsible for mitigation, 5) was the herbicide which is not recommended for use in salt water be inappropriately used if there was “off-label use”, and 6) would use in salt or brackish water create a more toxic environment or render the herbicide ineffective?

POLICY 7B: Materials that can degrade water quality and degrade or destroy the ecological system of the Croton River and Bay significant fish and wildlife habitat and the Haverstraw Bay significant fish and wildlife habitat shall not be disposed of or allowed to drain in, or on land within, the area of influence in the significant fish and wildlife habitats.

POLICY 7C: Storage of materials that can degrade water quality and degrade or destroy the ecological system of the Croton River and Bay significant fish and wildlife habitat or Haverstraw Bay significant fish and wildlife habitat shall not be permitted within the area of influence of the habitat unless best available technology is used to prevent adverse impacts to the habitat.

The committee discussed that the toxicity of the herbicide in full strength has been determined to be harmful to humans. The committee raised the question about how will this herbicide be stored and what precaution will be undertaken for storage prior to its application?

POLICY 7D: Restoration of degraded ecological elements of the Croton River and Bay and Haverstraw Bay significant fish and wildlife habitats and shore lands shall be included in any programs for cleanup of any adjacent toxic and hazardous waste sites.

The state has included in its CAF that this policy is applicable. However, the committee does not believe that this policy is applicable since the Croton River is not a toxic waste site, rather it is a site in which an invasive plant has spread.

POLICY 7G: Such activities must not cause degradation of water quality or impact identified significant fish and wildlife habitats.

The committee identified this policy as applicable, but did not believe they had sufficient data about the breakdown and diffusion of the chemical and whether there is any potential for the chemical to seep into the aquifer. The committee questioned whether the DEC could claim certainty and provide data to support this claim?

It was also discussed by the committee members that the treatment of the non-tidal section of the Croton River with endothal would result in any remaining residual endothal directly entering the tidal zone section of the Croton River at the southern tip of Fireman's Island and continue in the tidal zone section of the Croton River for one mile to the MetroNorth railroad trestle bridge over the Croton River and then enter into the Croton Bay and Hudson River. The committee was concerned that the endothal treated water has the potential to flow back and forth in the lower tidal portion of the Croton River with the local tidal action. There was no data provided to analyze and mitigate the impacts of any residual endothal on plants and aquatic organisms in the lower tidal portion of the Croton River and Adjacent areas of Croton Bay.

POLICY 8: Protect fish and wildlife resources in the coastal area from the introduction of hazardous wastes and other pollutants which bio-accumulate in the food chain or which cause significant sub lethal or lethal effect on those resources.

POLICY 9: Expand recreational use of fish and wildlife resources in coastal areas by increasing access to existing resources, supplementing existing stocks, and developing new resources. Such efforts shall be made in a manner which ensures the protection of renewable fish and wildlife resources and considers other activities dependent on them.

Again, the committee did not believe they had sufficient information from the DEC as to how the fish community would survive if the benthic community food source for it was impacted by the herbicide application.

POLICY 9A: Ensure continued recreational use and public access to the rivers through Village-owned land adjacent to the Metro-North parking lot, at Croton Point Park and at Senasqua Park along the Croton River, and at the Croton Yacht Club. Efforts should be made to encourage recreational use of the fish and wildlife resources found in these areas by increasing the opportunities for public access and enjoyment.

POLICY 9B: Encourage passive recreational enjoyment of the wildlife in the designated significant fish and wildlife habitats, on the Audubon Society Sanctuaries, on other public or private lands within the Village, where wildlife habitats are located. Encourage the recreational use of areas where such resources are found, as well as the protection of such resources.

These policies were identified as applicable to the LWRP because the opportunity for swimming and fishing in the Croton River and Silver Lake will be affected by the application of the herbicide. Again, the committee did not believe there was sufficient information to determine whether the proposed treatment was consistent with the policy and whether there was enough data to know how quickly the chemical would break down or dissipate in the water especially in the lower tidal zone where any residual endothal would reside after flowing through the upper freshwater section from Black Rock Dam to Fireman's Island.

POLICY 10: Further develop commercial finfish, shellfish and crustacean resources in the coastal area by encouraging the construction of new or improvement of existing on-shore commercial fishing facilities, increasing marketing of the state's seafood products, maintaining adequate stocks, and expanding aquaculture facilities. Such efforts shall be made in a manner which ensures the protection of renewable fish and wildlife resources and considers other activities dependent on them.

The committee identified this policy as applicable because the policy encourages maintaining adequate stocks, and because there is no mitigation plan proposed, the committee does not believe there is sufficient information to determine consistency. The committee was concerned about the impacts of the herbicide on non-target plants, fishery resources and the benthic community both in the target treatment area and downstream tidal non-target treatment area.

POLICY 18: To safeguard the vital economic, social and environmental interests of the state and of its citizens, proposed major actions in the coastal area must give full consideration to those interests, and to the safeguards which the state has established to protect valuable coastal resource areas.

Again, the committee does not believe there is sufficient data to determine consistency.

POLICY 19: Protect, maintain, and increase the level and types of access to public water-related recreation resources and facilities so that these resources and facilities may be fully utilized in accordance with reasonably anticipated public recreation needs and the protection of historic and natural resources. In providing such access, priority will be given to public beaches, boating facilities, fishing areas and waterfront parks.

The committee believed there was insufficient information provided on how long the herbicide remains in the water after application and whether or not water use restrictions should be increased especially for the Silver Lake swimming area and lower tidal portion of the croton River where swimming also occurs.

POLICY 30: Municipal, industrial, and commercial discharge of pollutants, including but not limited to, toxic and hazardous substances, into coastal waters will conform to state and national water quality standards.

POLICY 31: State coastal area policies and purposes of approved local waterfront revitalization programs will be considered while reviewing coastal water classifications and while modifying water quality standards; however, those waters already over-burdened with contaminants will be recognized as being a development constraint.

POLICY 38: The quality and quantity of surface water and ground water supplies will be conserved and protected, particularly where such waters constitute the primary or sole source of water supply.

The committee believes there is a lack of data to determine whether the proposed treatment will have affect the public water supply.

POLICY 44: Preserve and protect tidal and freshwater wetlands and preserve the benefits derived from these areas.

Although the committee acknowledges the significant threat of Hydrilla to the Croton River the committee members believes that they have not received sufficient information to make a recommendation about the consistency of the herbicide treatment given the potential impact to non-target plants, fishes and benthic community organisms.

The WAC recommended the following to the WCC:

1. That, a consultant be hired to help with the consistency review in order to provide and assist with the review of sufficient data to answer the committee's questions.
2. That, the WAC recommends that if a permit were to be issued, it should only be issued for a period of one year.
3. That, there is an error on the application which describes the lower portion of the treatment area as Deer Island, and the committee believes it should be Fireman's Island.
4. That, consideration be given to the herbicide treatment being applied in an area that is further downstream from Black Rock Dam to ensure protection of the drinking water aquifer.
5. That, additional information be submitted for the WAC's review that would address the concerns raised.

3. APPROVAL OF MINUTES

Mr. Kauderer made a motion to approve the minutes of May 25, 2016, seconded by Chairman Kane, and carried in favor, by a vote of 4-0.

4. ADJOURNMENT

Meeting was adjourned at 6:10 p.m.

Respectfully submitted,

Ronnie L. Rose
Secretary to the Waterfront Advisory Committee